



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF APRIL 22, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 22, 2010 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of April 8, 2010 as amended.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of April 14, 2010 as circulated. Motion carried 5 - 0.

OLD BUSINESS

C/Z #1670 – application of **NENTEGO PROPERTIES, LLC** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southeast of Route 24, approximately 2,500 feet westerly of Route 5 and Road 297 (Oak Orchard Road), to be located on 19.541 acres, more or less.

The Commission discussed this application which has been deferred since March 25, 2010.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1670 for Nentego Properties, LLC based upon the record and for the following reasons:

1. The property that is the subject of this application is part of an existing integrated C-1 and MR-RPC project. This change in zone is a reconfiguration of that project, adding additional CR-1 land to the existing C-1 area of land.
2. The neighborhood and other adjacent and surrounding properties will not be adversely affected by this rezoning, given the overall nature of the entire project, uses on

surrounding properties, and its location in relation to Route 24 and the intersection with Oak Orchard Road.

3. The project will be served by the Oak Orchard Sanitary Sewer District, owned and operated by Sussex County. It will also be served by central water.
4. This expansion of the existing commercial area satisfies the purposes of the Zoning Ordinance and the CR-1 District by promoting the orderly growth of the County and by providing a site along a major collector highway where there are existing commercial and service activities.
5. The Applicant should be aware that since this rezoning application is for a single contiguous area of land, the Commission is going to apply the requirements of Section 115-83.3 regarding large scale uses to any building or grouping of buildings that exceed 75,000 square feet in size on the entire area of this rezoning.
6. Because this rezoning will result in a change to the existing MR-RPC that was approved as CZ #1605, the Applicant will be required to submit a revised site plan to the Planning and Zoning Commission for the RPC. At that time, the Commission will determine whether the revised site plan complies with the approval and conditions of C/Z #1605 or whether it is a material change requiring a new public hearing on the RPC.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

C/Z #1678 – application of **BYRUM FARM, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying southwest of Route 20 (Zion Church Road), 450 feet south of Road 392 (Gum Road), to be located on 2.45 acres, more or less.

The Commission discussed this application which has been deferred since April 8, 2010.

Mr. Smith stated that he would move that the Commission recommend denial of C/Z #1678 for Byrum Farm, LLC based on the lack of a record made at the public hearing. The Applicant failed to make a record that could justify an approval of this change of zone request. There was also no information about how the application complied with the County's Land Use Plan or how it complies with the purposes and requirements of the CR-1 Commercial Residential District. For these reasons there's no basis for a recommendation for approval.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

C/U #1822 – application of **MICHAEL P. MULLIGAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 36,097 square feet, more or less, lying east of Road 381, 2,400 feet north of Route 54.

The Commission discussed this application which has been deferred since April 8, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1822 for Michael P. Mulligan as an auto repair shop based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.
2. The site was previously used as a restaurant.
3. The site is within the Fenwick Island Sanitary Sewer District operated by Sussex County.
4. The Applicant currently operates Mike's Auto Repair in the immediate vicinity and desires to relocate the business to this property.
5. There are other limited business and commercial uses in the vicinity of the property. There are also several residential uses with large garage or storage structures similar in size to what the Applicant has proposed.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
7. The use will provide a service to this area of Sussex County to meet the expanding need for auto repair services.
8. This recommendation for approval is subject to the following conditions and stipulations:
 - a. There will not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.
 - b. No vehicles for sale will be displayed on the premises.
 - c. The only repair work allowed in the shop will be for automobile and light trucks. No motorcycles, commercial vehicles, boats or RVs are permitted.
 - d. The shop will only be operated between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.
 - e. There shall only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
 - f. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
 - g. All parking areas shall be shown on the Final Site Plan.
 - h. Oil and other fluids associated with the business must be stored in approved containers and hauled away from the site by licensed handlers.
 - i. Any dumpsters on the site shall be screened from view of neighboring properties and roads. The location of any dumpster shall be shown on the Final Site Plan.
 - j. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1823 – application of **RAYMOND W. AND NANCY A. SCULL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for small engine repair to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County,

containing 1.052 acres, more or less, lying at the southwest corner of the intersection of Road 260 and Road 258.

The Commission found that DelDOT provided comments on September 11, 2008, and that the comments reference that a Traffic Impact Study was not recommended; that the existing Level of Service "A" of Walker Road will not change as a result of this application; and that the existing Level of Service "B" of Hudson Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 and that the comments reference that there are two soil types on this parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 21, 2010 and that the comments reference that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Nancy A. Scull and Raymond W. Scull were present on behalf of their application and stated in their presentation and in response to questions raised by the Commission that they are requesting approval of a small engine repair shop to work on lawnmowers and small tractors; that no construction is proposed; that all improvements already exist; that an automotive repair shop exist two doors down Walker Road; that no employees are intended; that no additional signage is requested; that they presently have a sign that measures approximately 3 feet by 4 feet; that business hours are from 8:00 a.m. to 5:00 p.m. Monday through Saturday; and that they were cited by the County staff and advised that they needed a Conditional Use.

Mrs. Scull submitted a petition in support of the application from area residents.

Mr. Robertson read the cover of the petition, which references in summary that Air Cooled Engine Service, LTD, has requested an Ordinance to grant Conditional Use of the property. As our closest neighbors, you are most aware of how little impact our business has on traffic. We are a small engine repair facility only. We do not sell equipment. Approximately 70% to 80% of our business is handled by our picking up and delivering equipment to customers. Please sign this petition stating that you have no objection to the continuing operation of the business.

It was noted that eight neighboring families signed the petition in support of the application.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1823 for Raymond and Nancy Scull for small engine repair based upon the record and for the following reasons:

1. This proposal is supported by the surrounding property owners who submitted a petition in favor of the application.
2. The use will have no significant impact on traffic.
3. The use will be limited to existing structures on the site.
4. There is a similar use in the immediate vicinity of this site.
5. This recommendation is subject to the following conditions:
 - a. The use shall be limited to the existing structures on the site, and small engine repair. No automobile repairs shall be permitted.
 - b. The existing unlit sign, or a sign not to exceed the size of the existing sign, shall be permitted.
 - c. The shop shall only be operated between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.
 - d. Any security lights shall be screened so that they do not shine on neighboring properties or roadways.
 - e. All parking areas and outside storage areas shall be shown on the Final Site Plan.
 - f. Oil and other fluids associated with the business must be stored in approved containers and disposed of properly.
 - g. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1824 – application of **ELLENDALE COMMUNITY CIVIC IMPROVEMENT ASSOCIATION, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for a medical center to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.857 acres, more or less, lying east of Road 213, 0.75 mile south of Route 16.

The Commission found that DelDOT provided comments on August 8, 2008, and that the comments reference that a Traffic Impact Study was not recommended, and that the existing Level of Service “A” of Old State Road (Road 213) will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 and that the comments reference that there are seven soil types on this parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that a portion of the site may flood or pond water; that a tax ditch at the northwest portion of the site may be affected; that it may not be necessary for any off-site drainage improvements; and that it will be necessary for some on-site drainage improvements.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 21, 2010 and that the comments reference that a portion of the site is located in the Ellendale Sanitary Sewer District and a portion is located in the Ellendale Planning Area; that the current System Connection Charge Rate is \$7,187.00 per EDU; that a portion of Parcel 64, shown as the site for the proposed medical center, has not been provided with a connection point and a gravity sewer is not available at the site's proposed access frontage on Route 213; that the developer will be required to pump to an approved connection point; that extension of sewer service from the site to a connection point will be at the developer's expense; that conformity to the Ellendale Wastewater Planning Study of June 2007 will be required; that sewer capacity is anticipated to be adequate for the project, but must be verified; that if the building or a portion of it will be outside of the sewer district, it will be necessary to consider a sewer annexation; that the current sewer district boundary follows Maple Branch; and that a concept plan is required.

Mr. Lank reminded the Commission that the Commission conceptually approved the parcel on March 18, 2009.

The Commission found that Bishop Major Foster and Reverend Charles Dennis were present on behalf of the Ellendale Community Civic Improvement Association, Inc. and stated in their presentations and in response to questions raised by the Commission that some of the area is very low in elevation; that there is a need for central water due to the poor water quality of the area; that medical assistance is needed in the area; that they are proposing a wellness center, which will be staffed with doctors and nurses; that they anticipate that the center will be open from 8:00 a.m. to 8:00 p.m. six days per week; that they hope to get central water from Artesian Water Company; that they would like to place a sign at the entrance and that the sign would not exceed 4 feet by 8 feet; that some wetlands areas do exist to the rear of the property, not on the property; and that adequate space is available for parking on the site.

The Commission found that Terrance Neal, Natisha Austin, and Kristy Gibbs were present and spoke in support of the application and stated that the use would be good for the community; that small injuries could be taken care of quickly, rather than dealing with emergency rooms which sometimes take a long time to get service; that the use would be an asset to the community; and that there are several child care centers in the area and that this center could serve those child care centers in emergencies.

The Commission found that there were no parties present in opposition to the application.

Based on a show of hands, the Commission found that there were 9 parties present in support of this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1824 for the Ellendale Community Civic Improvement Association, Inc. for a medical center based upon the record and for the following reasons:

1. The use as a wellness center is a public use benefitting Ellendale and the surrounding areas of Sussex County.
2. There is a need for a wellness center in this area of Sussex County.
3. There will be no adverse impact on traffic as a result of this application.
4. The use is within a developing area according to the County's Land Use Plan.
5. This recommendation is subject to the following conditions:
 - a. The wellness center shall be permitted to operate 6 days per week, excluding Sundays.
 - b. The use and the site shall comply will all agency comments, including DelDOT for entrance and roadway improvements, and DNREC for stormwater management requirements.
 - c. One lighted sign, not to exceed 32 square feet in size per side, shall be permitted.
 - d. The site shall be served by central water as part of the Ellendale Sanitary Sewer District.
 - e. The site shall be served by central water.
 - f. The site plan shall comply with all DNREC and Sussex Conservation District requirements regarding the tax ditch that exists on the site.
 - g. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1826 – application of **KEMP'S PACKAGE STORE** to consider the Conditional Use of land in a B-1 Neighborhood Business District for multi-family dwelling structures (2 units) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 33,906 square feet, more or less, lying at the northeast corner of Route 16 and Route 30.

Mr. Lank advised the Commission that this application was withdrawn on April 15, 2010.

C/U #1827 – application of **DRY DOCK, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a non-profit facility (meeting place) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.436 acres, more or less, lying southwest of Road 277 (Angola Road), 450 feet southeast of Route 24.

The Commission found that DelDOT provided comments on June 17, 2008, and that the comments reference that a Traffic Impact Study was not recommended, and that the existing Level of Service "B" of Road 277 will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 and that the comments reference that there are three soil types on this parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are

affected; that it will not be necessary for any off-site drainage improvements; and that it is not likely that on-site drainage improvements will be required.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 21, 2010 and that the comments reference that the site is located in the Angola Neck Sanitary Sewer District; that wastewater capacity is available for the project; that the parcel has been provided with an eight-inch sanitary sewer lateral along the parcel's frontage on Angola Road; that the sewer district is currently under construction and is scheduled to become operational as early as the Summer of 2011; that connection to the sewer system is mandatory and parcels are required to connect during the first year after service becomes available; and that a concept plan is not required.

The Commission found that Kevin Schroeder, Vice President of Dry Dock, Inc., was present and stated in his presentation and in response to questions raised by the Commission that the existing building was originally a one-room schoolhouse; that the building has been used as a meeting place for years for recovery groups; that there may be 40 one-hour meetings per week; that the facility is operational seven days per week; that the facility is very small; that no one resides on the premises; that there are no cooking facilities in the building; that the building is over 100 years old; that they hope to submit revised plans for a 28' by 60' building to replace the existing building; that there has been some interest by historic groups to relocate the building to another location; that the location of the existing parking area is the best location on the site to locate a new building; that some of the woods will have to be removed to create a new parking lot; that the existing entrance location is the best location for an entrance since it is approximately at the center of the outside of the curve of Angola Road; that at present some of the clients have to park along Angola Road; and that there will be adequate space on the site for the required parking once a new building is constructed.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1828 – application of **MARK AND DAWN THERIAULT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat and RV storage facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.34 acres, more or less, lying south of Route 26, 1,100 feet east of Road 365.

The Commission found that DelDOT provided comments on May 12, 2008 and that the comments reference that the site shall have a commercial entrance along Route 26; that the existing residential entrance shall be removed, topsoiled, seeded, mulched and regraded to assure positive drainage; that entrance plans shall be developed in accordance with DelDOT rules and regulations prior to entrance approval; that an additional 20-feet of right-of-way was dedicated to public use and a 10-foot wide temporary construction easement was established along Route 26;

that a 27-foot wide strip was reserved for future DelDOT road improvements; and that a Letter of No Objections is not a DelDOT endorsement of the project.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 and that the comments reference that there are five soil types on this parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it is not likely that on-site drainage improvements will be required.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 21, 2010 and that the comments reference that the site is located in the Beaver Dam Planning Area; that an on-site septic system is proposed; that if and when the County provides sanitary sewer service, a connection to the system will be required; that the County does not have a schedule at this time to provide sewer service; and that a concept plan is not required.

The Commission found that Mark and Dawn Theriault were present and stated in their presentation and in response to questions raised by the Commission that they are requesting approval to operate a boat and RV storage facility; that they propose to provide a 1st Class project; that they are planning on landscaping along Route 26 to soften the view along Route 26 since the area is mixed residential and commercial, and since Route 26 is heavily travelled during summer months by people travelling to the resorts in the area; that the entrance should be adequate to serve the project and not disrupt traffic on Route 26; that they have not received any objections from neighbors in the community; that they will be living on the property and operating the business; that business hours are planned to be from 7:00 a.m. to 7:00 p.m. seven days per week during summer months; that business hours during the remainder of the year would be shorter; that the storage area will be secured and supervised; that no repair or service work on boats or RVs will be permitted on the site; that the storage area will be fenced and landscaped along the perimeter; that the fencing will be installed in phases; that they propose the landscaping along Route 26 so that they do not have to landscape between their home and the storage area so that they can view the storage area from their home; that there are several business uses in the area, i.e. a lawnmower repair business, an auto parts store, an antique store, a general store, and a thrift store; that there will be no access to the storage area without supervision; that no sales are proposed; that they would like to install a small 4 feet by 8 feet sign; that security lighting will be at a minimum and that the lights will be downward illuminated; that owners will not be permitted to occupy the campers and RVs stored on the site; that they do not anticipate more than 200 spaces being setup for storage of the boats or RVs; and that they are planning on creating spaces with 20' to 25' width so that the boats and RVs stored on each space have separation from adjoining spaces.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearing, the Commission discussed this application.

Mr. Smith stated that he was prepared to make a motion on this application and asked the Commission if a maximum number of spaces should be placed on the project.

Mr. Burton suggested that the maximum number of spaces should not exceed 200 spaces.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1828 for Mark and Dawn Theriault for boat and RV storage based upon the record and for the following reasons:

1. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The use as a boat and RV storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
3. The use will not have any adverse impact upon traffic in the area.
4. This recommendation for approval is subject to the following conditions and stipulations:
 - a. Storage shall be limited to boats, personal watercraft and RVs only.
 - b. The boat and RV storage facility will be open during daylight hours only.
 - c. The perimeter of the site shall be fenced with 7-foot high fencing. The Applicant may construct the fenced-in area in phases.
 - d. No maintenance or service of boats or RVs shall be performed on the site.
 - e. No sales of boats or RVs shall occur from the site.
 - f. All persons visiting the site shall be accompanied by representatives of the Applicant, or of boat dealers with valid business licenses.
 - g. All boats and boat trailers moved to and from the storage yard on the site shall only be moved by representatives of the local boat dealers holding valid business licenses.
 - h. There may be one lighted sign, not to exceed 32 square feet per side, permitted on the site.
 - i. Security lighting shall be provided on the site and shall be directed away from neighboring properties.
 - j. The combined total of boats and RVs stored on the site shall be limited to 200.
 - k. The Final Site Plan shall include a landscaping plan with perimeter buffering.
 - l. The Final Site Plan, depicting the boat and RV storage areas, shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that the County Council wants to schedule a joint workshop meeting on a Tuesday afternoon in the near future to discuss the possibility of creating additional business and commercial districts that may be more restrictive and less impacting on adjacent and neighboring properties and communities (i.e. B-2, C-2 and/or Professional/Office District).

Mr. Smith stated that he would like to rescind his invitation to Jennifer Volk of DNREC for a presentation in May regarding an EPA mandate relating to watersheds, and that he may ask that the presentation be placed on some future agenda.

Meeting adjourned at 7:30 p.m.